

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 August 2024

DOCKET NUMBER: AR20230013807

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) to honorable, and a personal appearance before the Board.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record), 4 October 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty) 23 July 1982
- resume
- medical documentation, 3 March 2023
- character reference, from L.J., 5 October 2023
- character reference, from Y.J., 5 October 2023
- character reference, from T.B.T., 9 October 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20130014279 on 15 April 2014.
2. The applicant states he experienced extreme depression in his childhood and while serving he needed help with his depression. He did not receive the mental health services during his enlistment, which led to his discharge. On his DD Form 149, he annotates post-traumatic stress disorder (PTSD) and other mental health are related to his request.
3. The applicant enlisted in the Regular Army on 9 September 1980, for a period of 3 years. He was awarded the military occupational specialty of 76C (Equipment Records and Parts Specialist). The highest rank he attained was private first class/E-3.
4. The applicant accepted nonjudicial punishment on five occasions, under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ):

a. On 13 October 1980, for absenting himself without authority on or about 12 October 1980 from 5:00 p.m. until 11:10 p.m. His punishment imposed was forfeiture of \$100.00 for one month, 14 days extra duty, and 14 days of restriction.

b. On 4 November 1981, for committing an assault upon another Soldier, by striking him on the side of the head and intentionally inflicting grievous bodily harm, a deep cut, on or about 2 October 1981. His punishment imposed was reduction to the grade of private/E-2, forfeiture of \$200.00, 30 days of extra duty, and 30 days of restriction.

c. On 4 November 1981, for violating a lawful general regulation, by having a switchblade knife in his possession on 15 October 1981. His punishment imposed was reduction to the grade of private/E-1, forfeiture of \$144.00, 14 days extra duty, and 14 days restriction.

d. On 8 March 1982, for being disrespectful in language towards his superior noncommissioned officer on or about 2 March 1982. His punishment imposed was reduction to the grade of private/E-1, forfeiture of \$144.00 pay per month for one month, restriction for 14 days and extra duty for 14 days.

e. On 2 July 1982, for being disrespectful in language towards his superior noncommissioned officer, destroying military property a windowpane in the battery commander's office by throwing an object through it, and being incapacitated for the proper performance of his duties due to indulgence in intoxicating liquor or beer on or about 21 June 1982. His punishment imposed was reduction to the grade of private/E-1, forfeiture of \$200.00 for one month, 30 days extra duty, and 30 days restriction.

5. On 28 June 1982, the applicant's immediate commander notified the applicant that he was initiating action to separate him from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-31, under the Expeditious Discharge Program (EDP), with an under honorable conditions (general) discharge. As the specific reason for the proposed action, his commander noted the applicant's lack of self-discipline and failure to adapt to the military way of life, his receipt of four Article 15's for relatively minor offenses which indicated his continued military service could only result in further conflicts with authority.

6. On 2 July 1982, the applicant acknowledged receipt of the separation notification. He was advised of the rights available to him and the effect of waiving his rights. He did not voluntarily consent to the separation and elected not to submit a statement in his own behalf.

7. The separation authority approved the recommended separation action and directed the issuance of a under honorable conditions (general) discharge certificate.

8. The applicant was discharged accordingly on 23 July 1982, under the provisions of AR 635-200, paragraph 5-31, for failure to maintain acceptable standards for retention (EDP), in the grade of E-1. His service was characterized as under honorable conditions (general) with a separation code of JGH and reenlistment code RE-3. He completed 1 year, 10 months, and 15 days of net active service with no lost time.

9. He additionally provides his resume showing his various positions from handyman worker to truck driver, medical documentation dated 3 March 2023 summarizing his medication, labs ordered, referrals, addressed issues of but not limited to depression, major depressive disorder, and substance abuse in remission. Also, three-character reference letters summarizing him as a great friend, supportive of others, a mentor, a volunteer within his community, a role model, a great family man, kind, honest, and caring.

10. On 15 April 2014, the ABCMR carefully considered his request to upgrade his discharge to honorable. The Board determined the evidence presented did not demonstrate the existence of a probable error or injustice and determined the overall merits of the case were insufficient as a basis for correction of his record and denied his request.

11. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

12. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his characterization of service from under honorable conditions (general) to honorable. He contends he experienced mental health conditions including PTSD that mitigates his misconduct. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 9 September 1980; 2) The applicant accepted nonjudicial punishment on five occasions between October 1980-July 1982 for: 1) absenting himself without authority for most of a day, 2) committing an assault on another Soldier, 3) having a switchblade knife, 4) being disrespectful in language towards his NCOx2, 5) destroying military property, and 6) being drunk on duty; 3) The applicant was discharged on 23 July 1982, Chapter 5-31, for failure to maintain acceptable standards for retention (EDP), in the grade of E-1. His service was characterized as under honorable conditions (general). He completed 1 year, 10 months, and 15 days of net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's

Joint Legacy Viewer (JLV) and additional medical documentation provided by the applicant were also examined.

c. The applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct. He also reported experiencing depression prior to his enlistment. There is insufficient evidence the applicant reported or was diagnosed with a mental health disorder while on active service.

d. A review of JLV provided evidence the applicant did engage with the VA starting in 2002. He reported a history of being treated for depression and schizophrenia previously, but he has not been diagnosed with these conditions at this time by the VA. The applicant does not receive any service-connected disability. The applicant provided civilian medical documentation from a Family Medicine Clinic dated 03 March 2023. The documentation was an after-visit summary. The applicant was prescribed psychiatric medication, and during the visit, various physical and mental health conditions were addressed. The applicant was reported to have a history of depression and substance abuse. However, the specific history of the applicant's mental health condition or if it was related to the applicant's military service was not provided.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions including PTSD, which mitigates his misconduct. The applicant provided documentation that he has been diagnosed with Major Depression after his military discharge in 2023.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD that mitigates his misconduct while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while he was on active service. The applicant did engage in various types of misconduct, which could be avoidant or erratic behavior and a natural sequelae to some mental health conditions including PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he was experiencing a mental health condition or

an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The opine noted there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while he was on active service.
2. The Board determined there is insufficient evidence of in-service mitigating factors overcome the pattern of misconduct from assault, AWOL and disrespect. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 1 year, 10 months, and 15 days of net active service with no lost time. The Board noted the applicant was discharged for failure to maintain acceptable standard for retention (EDP) and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Based on this, the Board determined reversal of the previous Board decision is without merit and denied relief.
3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20130014279 on 15 April 2014.

█

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office

recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

2. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

3. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 5-31 provided for the discharge of enlisted personnel who had completed at least six months but less than 36 months of active duty and who had demonstrated that they could not or would not meet acceptable standards required of enlisted personnel in the Army because of the existence of one or more of the following conditions: poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally, or failure to demonstrate promotion potential. No individual would be discharged under this program unless the individual voluntarily consented to the proposed discharge. Individuals discharged under this provision of the regulation were issued either a general or honorable discharge.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Stress Disorder; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency

determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//